THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.18750 OF 2004

DATED : 24-02-2006

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Between:

1. Ravula Narasimha Reddy and 8 others. … Petitioners

And

1. The Divisional Forest Officer (South)
   Warangal, Warangal District and
   3 others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.18750 OF 2004

ORDER :

The petitioners claim to be the owners and possessors of Ac.47-00 guntas of land situated in Sy.No.165 and Ac.35-00 guntas of land situated in Sy.No.154 of Chinna Mupparam village of Nellikudur Mandal, Warangal District having purchased the same in the year 1963. It is pleaded that the lands in question form part of large extent of patta lands and have been under cultivation for the past several years. Even under the revenue records, the lands were shown as "under cultivation and patta lands". While so, when the Forest Officials have started interfering with the cultivation operations of the petitioners claiming that the land in their occupation are forest lands, the petitioners filed W.P.No.6547 of 2000. The said writ petition was allowed by this Court by order dated 31-10-2001 directing the respondents not to interfere with the possession and enjoyment of the petitioners. The said order was passed on the basis of a report of the joint survey conducted by the survey authorities with reference to the village map and record of 1343 Fasli in which it was held that lands in Sy.Nos.154 & 165 are patta lands and do not belong to the Forest Department. However, against the said order, Writ Appeal No.1953 of 2003 was preferred by the Forest Department and the same was disposed of by Judgment dated 12-11-2003 with a direction to the Divisional Forest Officer, Warangal as well as the District Collector, Warangal to consider the representation of the petitioners dated 28-1-2000 to stop unlawful obstruction with the land in possession of the petitioners and to demarcate the lands claimed by the Forest Department and patta land in Sy.Nos.154 & 165 and to take an appropriate decision in accordance with law. In pursuance of the said judgment of the Division Bench in W.A.No.1953 of 2003 the 1st respondent – Divisional Forest Officer, Warangal passed an order dated 13-2-2004 holding that the entire area of Sy.Nos.154 & 165 of Chinna Mupparam village is part and parcel of the Block Dhansari Reserved Forest notified under Section 4 of the Hyderabad Act 1354 Fasli vide G.O.Ms.No.939 & G.O.Ms.No.940 dated 8-10-1354 Fasli. The said order is under challenge in this writ petition.

The learned Counsel for the petitioners submits that the conclusion of the 1st respondent that the land in question forms part of Reserved Forest is factually incorrect and not supported by any record. The learned Counsel contends that as a

matter of fact a large extent of the land covered by Sy.Nos.154 & 165 has been under cultivation and the 1st respondent never raised any objection nor interfered with the said agricultural operations, except the land of the petitioners.

In the counter-affidavit filed on behalf of the respondents, it has been reiterated that the entire area covered by Sy.Nos.154 & 165 is part and parcel of Reserved Forest Compartment No.1163 and 1164 of Beat Alair Block Dhansari, notified under Section 4 of Hyderabad Act 1354 Fasli and that from the date of notification the entire land continues to be in possession and control of the Forest Department covered with boundary line. The plea of the petitioners that they are the owners and possessors and that they have been carrying on agricultural operations has been denied. It is further stated that the revenue officials have no authority to issue pattedar pass books in respect of the land declared as Reserved Forest and to record the name of the petitioners in the revenue records. It is further stated that the impugned order was passed by the 1st respondent basing on the documents and there is no need for demarcation by conducting joint survey.

On the basis of the said counter-affidavit, the learned Government Pleader appearing for the respondents submits that the claim of the petitioners that the land in their possession is patta land is untenable and cannot be accepted.

It is relevant to note that while disposing of Writ Appeal No.1953 of 2003 the Division Bench of this Court having regard to the undisputed fact that Sy.Nos.154 & 165 consists of vast extents of land and having found that the claim made by the petitioners in respect of the land in question is a serious disputed question of fact, observed that such complicated question cannot be satisfactorily resolved on the strength of the affidavits filed by the parties and accordingly directed the respondents to consider the representation of the petitioners dated 28-1-2000 and take an appropriate decision in accordance with law. Though there was no positive direction to conduct the joint survey, the Division Bench having regard to the nature of the controversy between the parties observed as under :

> *"… … … It shall be open to the appellants herein to have a joint survey and inspection of the lands in question, even though earlier there was a joint survey and inspection of the said lands. It is needless to observe that if any such joint survey operations are undertaken, the respondents – writ petitioners are also entitled to participate in the*

same for which purpose an appropriate notice shall be issued to them. The process in this regard shall be completed as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

The order of the learned single judge is accordingly modified. The writ appeal is allowed to the extent indicated above. No order as to costs."

However, under the impugned order dated 13-2-2004 the 1st respondent has merely reiterated the stand that the entire area of Sy.Nos.154 & 165 is part and parcel of Reserved Forest. Admittedly, no joint survey was conducted as observed by this Court before passing the order. On the other hand, the 1st respondent observed that there was no need for the joint survey.

The petitioners in their affidavit have categorically pleaded that the Divisional Forest Officer, Warangal vide proceedings dated 17-11-1959 while referring to the proceedings of the Chief Conservator of Forests, dated 29-10-1959 had taken note of the fact that the original pattedar surrendered his claim for Sy.Nos.200, 201, 202, 203 and 205 and as such Sy.Nos.149, 150, 154, 165, 166 and 168 of Mupparam village are to be demarcated and handed over to the pattedar along with standing timber. Pursuant thereto, the Deputy Collector, Mahaboobabad issued a Certificate dated 2-4-1960 permitting alienation of the lands in Sy.Nos.149, 150, 154, 165, 166 and 168 of Chinna Mupparam village under Sections 47 and 48 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The petitioners also pleaded that by virtue of the said alienation several ryots came into possession of the land in the said survey numbers which was later on developed into a village by name Narayanapuram which is now a separate Gram Panchayat.

It is not in dispute that in pursuance of the orders of this Court in W.P.No.6547 of 2000, the Assistant Director of Survey & Land Records inspected and demarcated the disputed area along with Forest Range Officer, Sub-Divisional Forest Officer and Mandal Revenue Officer, Nellikudur on 31-3-2001 and submitted a report to the District Collector, Warangal. It appears that on the basis of the same, the Joint Collector, Warangal addressed a letter dated 12-7-2002 stating that a part of the land in Sy.Nos.154 & 165 is in possession and cultivation of the ryots of the village.

Thus, the specific case of the petitioners is that a large extent of the land in Sy.Nos.154 & 165 including the land belonging to the petitioners does not form part of Reserved Forest.

Though the respondents filed a detailed counter-affidavit, the abovesaid plea of the petitioners on the basis of the proceedings of the Divisional Forest Officer, dated 17-11-1959 has not been properly explained. On the other hand, it is stated that the said records could not be traced out and the further correspondence relied upon by the petitioners is also not available.

However, the respondents did not dispute the joint survey conducted by the Revenue and Forest authorities in pursuance of the orders of this Court in W.P.No.6547 of 2000, but explained that the report submitted by the Assistant Director of Survey & Land Records, Warangal, dated 31-5-2001 was not based on proper and relevant records.

It is also relevant to note that in the counter-affidavit though it was stated that the notification under Section 4 of the Hyderabad Forest Act, 1355 Fasli was published, it has been admitted by the respondents themselves that the proclamation of final notification under Section 15 of the A.P. Forest Act, 1967 is still pending. The A.P. (Telangana Area) Forest Act, 1355 Fasli stood repealed under Section 72 of the A.P. Forest Act, 1967. The publication of a notification in the Gazette under Section 4 of the Act is only a proposal to constitute any land as a Reserved Forest. Thereafter, the publication of a final notification specifying definitely, according to boundary marks erected or otherwise, the limits of the forest has to be made under Section 15 of the Act and then only such forest shall be deemed to be a Reserved Forest from the date fixed in the notification.

Having regard to the fact that no such notification under Section 15 of the A.P. Forest Act, 1967 has yet been published and having regard to the specific plea raised by the petitioners that a part of the land in Sy.Nos.154 & 165 does not form part of Reserved Forest but they are patta lands as per the proceedings of the

Divisional Forest Officer, Warangal dated 17-11-1959 and particularly having regard to the Certificate of Alienation dated 2-4-1960 issued by the Deputy Collector, Mahaboobabad, I am of the view that the 1st respondent was not justified in rejecting the representation of the petitioners merely asserting that it forms part of Reserved Forest as notified under Section 4 of the Hyderabad Forest Act, 1355 Fasli. Since the impugned order apparently is cryptic and various pleas raised by the petitioners have not been considered, it cannot be held to be a proper consideration of the representation of the petitioners in terms of the judgment of this Court in W.A.No.1953 of 2003. Having regard to the tenor of the said order, the impugned order can only be termed as a unilateral decision. The said order being not in conformity with the judgment in W.A.No.1953 of 2003 as well as the fundamental principles of natural justice cannot be sustained.

In the circumstances, the impugned order dated 13-2-2004 is set aside and the writ petition is disposed of with a direction to the respondents to consider the claim of the petitioners and to pass appropriate orders afresh in accordance with law after affording the petitioners an opportunity of personal hearing. Such exercise shall be completed as expeditiously as possible preferably within a period of eight (8) weeks from the date of receipt of this order. Till such time, the respondents are directed not to interfere with the possession and enjoyment of the lands of the petitioners in Sy.Nos.154 & 165 of Chinna Mupparam village. The petitioners are granted liberty to make a fresh representation with regard to their claim enclosing all the supporting material within four weeks from today.

The Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 24–2-2006.

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